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I.R.A. DOCKET ROOM
July 23, 2004

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VIA HAND DELIVERY

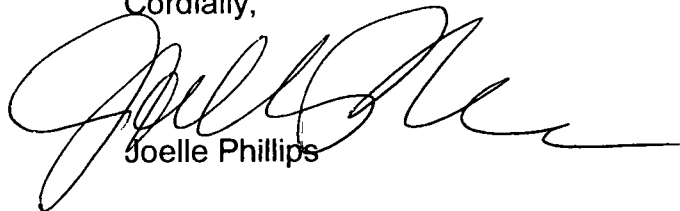
Hon Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition for Exemption of Certain Services*
Docket No. 03-00391

Dear Chairman Miller.

Enclosed are the original and fourteen copies of the *Brief of BellSouth Telecommunications, Inc. and Citizens Communications Company of Tennessee, LLC*. Copies of the enclosed are being provided to counsel of record

Cordially,



Joelle Phillips

JJP:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition for Exemption of Certain Services*

Docket No. 03-00391

**BRIEF OF BELL SOUTH TELECOMMUNICATIONS, INC.
AND CITIZENS COMMUNICATIONS COMPANY OF TENNESSEE, LLC**

BellSouth Telecommunications, Inc. ("BellSouth") and Citizens Communications Company of Tennessee, LLC ("Citizens") (jointly "Petitioners") file this brief in support of the relief Petitioners seek related to intraLATA toll service in this docket.

As set forth in Petitioners' *Proposal Regarding Relief Sought* ("Proposal") filed June 28, 2004 in this docket, T.C.A. § 65-5-208(b) mandates that the Tennessee Regulatory Authority ("TRA" or "Authority") shall exempt services from regulation when existing and future competition is sufficient to regulate the price of such services. T.C.A. § 65-5-208(b) provides

(b) The authority, after notice and opportunity for hearing, may find that the public interest and the policies set forth herein are served by exempting a service or group of services from all or a portion of the requirements of this part. Upon making such a finding, the authority may exempt telecommunications service providers from such requirements as appropriate. ***The authority shall in any event exempt a telecommunications service for which existing and potential competition is an effective regulator of the price of those services.*** (Emphasis added.)

The record in this docket demonstrates that no party contests Petitioners' evidence that existing and future competition is sufficient to regulate the price of intraLATA toll services in Tennessee. Given the lack of any factual dispute with respect to the status of competition for purposes of exemption, the sole issue for the TRA now to decide is specifically how that exemption should be fashioned.

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The record in this docket demonstrates that no party contests Petitioners' evidence that existing and future competition is sufficient to regulate the price of intraLATA toll services in Tennessee. Given the lack of any factual dispute with respect to the status of competition for purposes of exemption, the sole issue for the TRA now to decide is specifically how that exemption should be fashioned.

In their *Proposal* filed on June 28, Petitioners set forth a suggested model for relief in this docket. Given the lack of any factual dispute that intraLATA toll service is one for which the statute mandates exemption, Petitioners might well have sought a blanket exemption with no limitations whatsoever. Nonetheless, Petitioners have not proposed such far-reaching relief. Instead, Petitioners outlined four separate and specific exceptions to the exemption sought in an attempt to accommodate concerns expressed by participants in this docket. These four exceptions are sufficient to address any legitimate concerns raised by those parties as discussed below.

I. PRICE LIST

Petitioners propose that price changes for intraLATA toll service should be reflected in a publicly-filed price list at the TRA. Like publicly-filed tariffs, these price lists would provide a public statement of the current price for such services. By switching to a price list model, rather than a tariffing system for these services, however, Incumbent Local Exchange Carriers ("ILECs") would become full participants in the intraLATA toll market because they would be able to adjust the price without waiting periods associated with tariff filings under state law.

As an exempted service, there is no legal basis to require the prices for any carrier's intraLATA toll service to continue to be included in tariffs. The *Proposal* by Petitioners, however, continues to provide current information to the public and to the TRA regarding Petitioners' intraLATA toll service pricing by use of a public price list. By monitoring changes to the price list, the TRA (and interested parties) will continue to have all of the information needed to raise issues regarding potential below-cost pricing. The TRA still has the ability to issue data requests for cost information regarding a

service as to which a below-cost-pricing prohibition applies. Specifically, in the event BellSouth lowered prices dramatically, raising some legitimate question about whether the price might be below cost, this would be apparent to the TRA simply from the change in the price and would alert the TRA to seek further information.

II. CONTINUED PROHIBITION AGAINST BELOW-COST PRICING.

As noted in Petitioners' *Proposal*, the statute permits the TRA to exempt a service offered by an ILEC from the price floor.¹ Nonetheless, in light of concerns voiced by other parties in this docket, Petitioners have agreed not to seek an exemption permitting below-cost pricing. Stated simply, after the relief sought is granted, ILECs would agree to continue to price their intraLATA toll services above cost; Petitioners do not seek to use the relief sought in this docket to engage in below-cost pricing. However, Petitioners do seek to engage in real time competition, meaning that new pricing for intraLATA toll services must be brought to market quickly in order to effectively compete with other providers. While Petitioners agree to the limitation on below-cost pricing, Petitioners think it is vital that that prohibition not be used to slow Petitioners' intraLATA toll service offerings in reaching the market.

The concept underlying the prohibition against below-cost pricing is the fear of predatory pricing: that is, the activity in which one with superior market power prices its product so low that no one else can compete, thereby running other providers out of the market. As applied in this case, there is no indication in the record that Petitioners have sufficient market power in this intermodal intraLATA toll market to effectively use predatory pricing. Instead, the records shows that there is so much competition from so

¹ Specifically § 65-5-208(c) provides the TRA with the power to exempt services from the price floor

many sources today (many of which price their services very low or even free when bought in combination with other products), that it is highly unlikely that Petitioners would be able to damage those competitors with any below-cost price.

Given the low risk of any predatory price in light of these circumstances, the TRA need not retain tariffing obligations for exempted services solely in order to ensure that they are not pricing services below cost. The potential benefit of tariffing (to provide a 20-day time period to review for below-cost pricing) is far outweighed by the detriment (slowing ILEC pricing so that it cannot compete in real time like its many competitors). For this reason, Petitioners have proposed that the obligation to price intraLATA toll services above cost should not be imposed through a tariffing process. The need to speed competitive price changes to Tennessee consumers and the severe competitive disadvantage to Petitioners, as their pricing would be delayed in entering the market, is too great.

III. TERMS AND CONDITIONS FOR INTRALATA TOLL SERVICE WILL REMAIN IN TARIFFS.

The focus of Petitioners' efforts in this docket is pricing flexibility. For that reason, Petitioners have not sought to completely eliminate from existing tariffs the terms and conditions related to the various intraLATA toll services offered by Petitioners. Instead, Petitioners have proposed that, if the relief sought in this case is granted, Petitioners would amend the tariffs to simply remove the price references, but to continue to provide in the tariff all of the terms and conditions relevant to intraLATA toll services. In this way, the terms and conditions affecting these services will continue to be publicly available and enforceable through the tariffing process, and any changes to those terms and conditions would continue to be subject to the TRA's rules governing

tariffs. This provision clearly establishes that it is solely pricing flexibility that Petitioners seek

IV. RESALE OBLIGATIONS

Petitioners have maintained throughout this docket that federal resale obligations would be completely unaffected by the relief they seek. Specifically, to the extent that a federal resale obligation would otherwise apply, Petitioners agree that the relief they seek would not in any way change or limit the application of that federal resale obligation, which would be based upon the price reflected in the price list. Accordingly, parties who resell Petitioners' intraLATA toll service would be entitled, in those situations in which the resale obligations apply, to obtain intraLATA toll service for resale at the price reflected in the price list *minus* the TRA-set resale discount. This process will operate just as it has operated prior to seeking this relief. The only difference would be that the price would be the price contained in the price list.

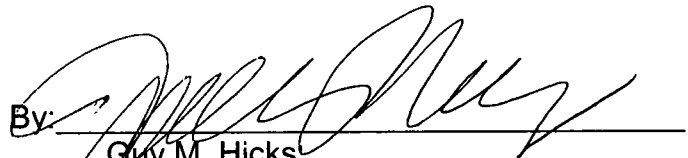
V. CONCLUSION

Notwithstanding the long period of time devoted to multiple rounds of discovery in this docket, the record is not complex. The testimony is uncontroverted that future and existing competition is sufficient to regulate the price of intraLATA toll service in Tennessee. As directed by the General Assembly, the TRA must, in light of this uncontroverted record, grant exemption. By entering an order exempting intraLATA toll service with the specific exceptions outlined above, the Authority will both fulfill its duty under the statute and appropriately address the concerns of other parties in this docket without turning a blind eye to the General Assembly's direction that competitive services should be transitioned to a market-based model.

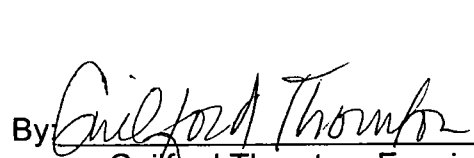

Because Petitioners have agreed to the exceptions outlined above, nothing in the relief sought by Petitioners would prevent parties from coming to the Authority to seek relief in the event that such parties believe Petitioners were engaged in below-cost pricing. Likewise, nothing in the relief would prevent the Authority from continuing to regulate terms and conditions and any changes in terms and conditions for such services, all of which would remain part of the ILECs' tariffs and subject to TRA rules governing tariffs. Instead, what the relief sought would accomplish is simply to provide the ILECs with the opportunity to be full participants in the market, enabling them to speed competitive price changes to the market where customers would benefit from this robust competition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2004, a copy of the foregoing document was served on the parties of record, via the method indicated:

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☐ Overnight
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